

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 75
Finance

(Senator Ellis)

Business Regulation - Home Builders - Performance Bond Requirement

This bill requires each person that constructs new homes for sale to the public to purchase a performance bond for the construction of each new home before beginning construction. Liability under the performance bond must be for the duration of the construction and a period of five years after completion. Except for permits for home construction to be performed directly by a landowner for his/her own use, the building and permits department of a county may not issue a permit for home building unless the homebuilder has purchased a performance bond in accordance with the bill.

Fiscal Summary

State Effect: The Office of the Attorney General (OAG), Consumer Protection Division (CPD), can handle the bill's requirements with existing resources, assuming 50 or fewer new complaints are generated by the bill. Revenues are not affected.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Under the Maryland Home Builder Registration Act, builders of new homes generally must register with the Home Builder and Home Builder Sales Representative Registration Unit within CPD. "New home," as it applies to the Act, means a newly constructed residential dwelling in the State and the fixtures and structure that are made a part of the dwelling at the time of construction.

Liability Insurance and Licensing Bond Requirement

Each person that constructs new homes for sale to the public must maintain general liability insurance for at least \$100,000. If a home builder's registration has been revoked and the home builder applies for a new registration, the unit must, in its discretion, approve the application on the applicant's fulfillment of specified terms and conditions, including the posting of a bond for the benefit of, and the payment of, any judgements or awards due to subcontractors, suppliers, and consumers for a period of at least four years from the date of approval of the registration.

Construction Permitting

Except for a building permit for construction to be performed directly by a landowner solely for the landowner's own use, the building and permits department of a county may not issue a permit for home building unless (1) the permit includes the home builder registration number of the registrant and (2) the person pays the Guaranty Fund fee, as required under the Act.

Home Builder Guaranty Fund

The Home Builder Guaranty Fund, administered by CPD, allows consumers to seek compensation for actual losses resulting from an act or omission by a registered builder who constructs a new home for a consumer. The fund is supported by fees collected by local governments from home builders upon application for a construction permit. Builders are permitted to pass this cost on to the consumer. The fee is currently \$50, and local governments may retain up to 2% of the fees collected for administrative costs. CPD must maintain the fund at a level of at least \$1 million.

A consumer who entered into a contract with a registered builder to construct a new home in the State on or after January 1, 2009, may file a claim against the fund. However, a spouse or other immediate relative of the registered builder, an employee or principal of a registered builder, nor an immediate relative of an employee or principal of a registered builder may make a claim against the fund. Generally, "actual loss" means the costs of restoration, repair, replacement, or completion that results from the incomplete construction of a new home, a breach of an express or implied warranty, or a failure of the builder to meet specified construction standards or guidelines. The fund may award up to \$50,000 to any one claimant for acts of any one registered builder and up to \$300,000 for all claims against any one registered builder, unless the builder reimburses the fund.

Express and Implied Warranties

Generally, in addition to any express warranty made by a builder, in every sale, warranties are generally implied that, at the time of completion, any improvement is:

- free from faulty materials;
- constructed according to sound engineering standards;
- constructed in a workmanlike manner; and
- fit for habitation.

If any express or implied warranty is breached, a court may award legal or equitable relief, or both, as justice requires. Unless an express warranty specifies a longer period of time, express or implied warranties generally expire one year after the delivery of the home or after the taking of possession by the original purchaser, whichever occurs first. Warranties for structural defects expire two years after the date of completion, delivery, or taking possession, whichever occurs first. Warranties do not expire on the subsequent sale of a dwelling. However, the warranties do not apply to any defect *caused* by the original purchaser.

Background: A performance bond requires a surety to cover losses incurred by a consumer if a home builder defaults or otherwise cannot complete a project as promised.

According to the unit's 2019 annual report, 2,449 home builders were registered with the unit as of June 30, 2019, and 19,739 single family housing permits were issued in the State in fiscal 2019.

Small Business Effect: Small-business home builders may incur significant costs to purchase performance bonds as required under the bill. To the extent that those costs can be passed on to homebuyers, the net effect on home builders may be minimal, but housing prices may increase.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Anne Arundel, Baltimore, Charles, Montgomery, and Somerset counties; Maryland Association of Counties; Department of Legislative Services

Fiscal Note History: First Reader - January 23, 2020
mr/mcr

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